IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PERFORMANCE PRICING, INC., Plaintiff, v. GOOGLE INC., AOL LLC, MICROSOFT CORPORATION, YAHOO! INC., IAC SEARCH & MEDIA, INC., and A9.COM, INC., Defendants.	Case No. 2:07-cv-432 (LED) **JURY TRIAL DEMANDED**

Plaintiff's motion for summary judgment of patentability under 35 U.S.C. section 101

I. Introduction.

Plaintiff Performance Pricing, Inc. hereby moves the Court for summary judgment under Rule 56 of the Federal Rules of Civil Procedure and Local Rule CV-56. Performance Pricing seeks an order that asserted claims 1, 2, 12-15, 18, 20-23, and 30 of U.S. Patent No. 6,978,253 (the "'253 patent") meet the patentability requirements of 35 U.S.C. Section 101.

II. Statement of issues of fact to be decided by the Court.

Each of asserted claims 1, 2, 12-15, 18, 20-23, and 30 of the'253 patent meets the patentability requirements of 35 U.S.C. Section 101.

III. Statement of undisputed facts.

1. Performance Pricing has accused Google AdWords and AOL Marketplace of infringing claims 1, 2, 12-15, 18, 20-23, and 30 of the'253 patent.

2. Claims 1, 2, 12-15, 18, 20-23 are process claims.

3. The invention claimed in each of claims 1, 2, 12-15, 18, 20-23 is tied to a "global communications network."

4. The invention claimed in claim 14 is tied to the "Internet."

5. The invention claimed in claim 12 is tied to a "master controller," which the Court has construed as a "computer server, centralized server, operation controller, or content server for managing transactions." Claim Construction Order (Docket No. 231) at 32.

6. Claim 30 is a system claim.

7. Claim 30 reads: "a system for conducting e-commerce over a global communications network, comprising a computer server having access to the global communications network, and being programmed to . . . ."

8. Claims 1, 2, 12-15, 18, 20-23, and 30 do not claim phenomena of nature.

9. Claims 1, 2, 12-15, 18, 20-23, and 30 do not claim mental processes.

10. Claims 1, 2, 12-15, 18, 20-23, and 30 do not claim do not claim abstract ideas.

11. Claims 1, 2, 12-15, 18, 20-23, and 30 are presumed valid, and the presumption may only be overcome by clear and convincing evidence.

IV. Argument.

Defendants Google Inc. and AOL LLC have filed their own motion for summary judgment seeking an order that the asserted claims of the '253 patent are not patentable under 35 U.S.C. § 101 [Docket No. 251]. Plaintiff opposes Defendants' motion and will submit an opposition brief in support of its position.

Determination of patentability under 35 U.S.C. § 101 is a question of law to be decided by the Court. *See In re Bilski*, 545 F.3d 943, 951 (Fed. Cir. 2008) ("Whether a claim is drawn to patent-eligible subject matter under § 101 is an issue of law that we review de novo."). Accordingly, resolution of Defendants' motion may (and Plaintiffs maintain should) result in a legal determination that the claims of the '253 patent meet the patentability requirement of 35 U.S.C. Section 101. The arguments to be presented in Plaintiff's Opposition will serve the dual purpose of explaining why Defendants' motion should be defeated and this motion should be granted.

Dated: November 23, 2009 By: /s/ Richard E. Lyon

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document was served, via the Court's CM/ECF system per Local Rule CV-5(a)(3), on counsel for Defendants this 23th day of November, 2009.

/s/ Richard E. Lyon
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